

# EXHIBIT E

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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CSX TRANSPORTATION, INC.,

Plaintiff,

vs.

PORT ERIE PLASTICS, INC.,

Defendant.

)  
)  
)  
) Civil Action  
)  
) Case No.  
) 05-139 Erie  
)  
)

- - -

Deposition of STEVE BARTOSIK

Thursday, February 2, 2006

- - -

The deposition of STEVE BARTOSIK, called as a witness by the Plaintiff, pursuant to notice and the Federal Rules of Civil Procedure pertaining to the taking of depositions, taken before me, the undersigned, Teresa Constantini Berardi, a Notary Public in and for the Commonwealth of Pennsylvania, at the law offices of MacDonald Illig Jones & Britton, LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1498, commencing at 1:35 p.m. the day and date above set forth.

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COMPUTER-AIDED TRANSCRIPTION BY  
MORSE, GANTVERG & HODGE, INC.  
ERIE, PENNSYLVANIA  
814-833-1799

- - -

1 A Yes.

2 Q So perhaps at some times you might put ten  
3 or 12, but --

4 A Yes, yes, that's true.

5 Again, depending on the activity of -- I

6 mean, that's -- there were any number of cars that  
7 were on storage tracks, and as I say -- I mean, we  
8 tried to limit the amount of storage charges that were  
9 being assigned those cars, but typically, as I say, we  
10 would have about eight cars in there

11 Q How did the railcars, if you know, get to  
12 Mount Fort?

13 A The cars would come in -- based on whenever  
14 we would empty a car, we would order another one in  
15 from the storage track to replace it

16 Q All right.

17 When you say whenever you emptied a car,  
18 where would this emptying process take place?

19 A The emptying took place at Mount Fort.

20 Q The contents of the car would be

21 transported from the railcar to a Presque Isle truck?

22 A Yes, and then would be taken to Port Erie

23 Plastics

24 Q And there you would unload the product into  
25 the Port Erie silo?

1 A We had -- we would fax them with a -- we

2 had a form, an empty fax -- empty car fax that we  
3 would send to the railroad with the car numbers and  
4 the date that they were emptied.

5 MR. HOWARD: Let's mark this as Bartosik 1.

6 (Thereupon, Bartosik Deposition Exhibit  
7 No. 1 was marked for identification.)

8 BY MR. HOWARD:

9 Q The court reporter has handed you an  
10 exhibit that we have marked as Bartosik 1. It is a  
11 seven-page exhibit.

12 Do you recognize Exhibit 1?

13 A Yes, I do.

14 Q What is the first page?

15 A The first page?

16 Q Well, the real first page, that page  
17 (indicating), yes.

18 A That's just a cover letter that I hand  
19 wrote explaining roughly what these documents were  
20 when I faxed them to you.

21 Q And this is your fax cover sheet to me?

22 A Yes, it is.

23 Q Okay. Let's turn to the third page. Right  
24 there (indicating).

25 At the top, there's a fax line that

1 A That's correct.

2 Q Do you know where the railcar was before it  
3 arrived at Mount Fort?

4 A Most of them were on a storage track.

5 Q Where is that storage track?

6 A They had -- CSX had various locations.

7 One of them was right down here on the  
8 Bay Front Highway.

9 Some of them were at their yards on  
10 Ash Street, and some of them would have been out in --  
11 at their marshalling yards out on Downing Avenue.

12 Q And who brought the cars from the CSX  
13 storage track to Mount Fort?

14 A A CSX local switch crew would bring them  
15 in.

16 Q How often would that occur?

17 A Depending on the particular day, a couple  
18 times a week.

19 Q And what triggered the movement of a  
20 railcar from the CSX storage yard to the Mount Fort  
21 Terminal?

22 A Every time we would make an empty, they  
23 would swap one out.

24 Q How would CSX know that you had emptied a  
25 car?

1 indicates this is page 3 of 3, and it says "CSX  
2 Transportation Constructive Placement Notice."

3 What is a constructive placement notice?

4 A This is the railroad's notification to the  
5 customer that a car has arrived at destination and is  
6 awaiting their instructions as far as what to do with  
7 it.

8 Q Is this an example of a constructive  
9 placement notice that Presque Isle Trucking would have  
10 received from CSX?

11 A Yes, it is.

12 Q Now, this is dated September of 2003.

13 Do you see that in the lower left-hand  
14 corner?

15 A Yes, uh-huh.

16 Q And how many cars are identified on this  
17 constructive placement notice?

18 A There's one.

19 Q Would a constructive placement notice have  
20 been sent by CSX for every car that arrived?

21 A Yes.

22 Q Did Presque Isle Trucking receive  
23 constructive placement notices like this for the cars  
24 that were shipped to Port Erie?

25 A Yes, we did.

1 Q What does this constructive placement  
2 notice tell you when you get it?  
3 A Well, first, it gives a waybill number, the  
4 shipper, origin, freight terms, gross weight -- or,  
5 net weight, I'm sorry, origin Did you get origin?

6 Okay.

7 Q When you receive this constructive  
8 placement notice, what is your understanding of where  
9 that car is at that moment?

10 A The car is in Erie, Pennsylvania.

11 Q Is it at Mount Fort?

12 A No, it isn't.

13 Q It's at the CSX storage area?

14 A Yes, it is.

15 Q When you receive this information, what  
16 action, if any, would you take?

17 A We wouldn't take any at this point.

18 Q What would you do with this information?

19 A Actually, nothing. They weren't our cars.

20 We got -- we got this notice as a courtesy  
21 just so we knew what was coming. That was all.

22 Q Do you know whether this notice was sent to  
23 any other party?

24 A I'm not sure.

25 It's addressed to Port Erie Plastics. I'm

1 release.

2 We did it a number of different ways.

3 Q How would you know what car number to ask  
4 for?

5 A This inventory that we have here is

6 really -- is much later.

7 During the time that this all happened,  
8 this inventory would have been much longer, and it  
9 would have shown -- in the area where "Date Placed" is  
10 marked, it would have shown the information from the  
11 constructive placement notice, and it would have said  
12 "Constructively Placed" and the date that this  
13 constructive placement notice was sent.

14 Q All right. Let me make sure --

15 A And at that point, I would take the oldest  
16 car of the -- of -- there are two products involved  
17 here, 8949 and 8931, and I would take the oldest car  
18 of that product and replace it, you know, replace the  
19 empty.

20 Q Now, is it your testimony that this  
21 inventory form that we're looking at was different in  
22 the 2002-2003 time period?

23 A Yes.

24 Q In what --

25 A I mean, the form, itself, was identical,

1 not sure. I think they got one, but I can't swear to  
2 that.

3 Q Look at the page prior to that one.

4 What is that document?

5 A That is a railcar inventory that I  
6 generated every Friday and sent to Jim Witkowski at  
7 Port Erie Plastics.

8 Q Did you send it to anyone else?

9 A No.

10 Q The cars that are identified on here --  
11 let's look at the first one.

12 AMCX 104557 indicates that the date that  
13 car was placed was July 26th.

14 What does that mean, "Date Placed"?

15 A That's the day that that railcar left the  
16 storage track and was placed on our private track for  
17 unloading.

18 Q How did CSX know to move it from the  
19 storage track to your lease track?

20 A Typically, you know, I would -- I would  
21 call one of the train masters at the CSX yard here and  
22 give them a car number.

23 At times, we would put them on -- we would  
24 mark that information on the bottom of our -- we  
25 would hand write it on the bottom of our empty car

1 except that there would be much more -- much -- you  
2 know, many more cars on here, and the constructive  
3 placement dates would be shown on that inventory.

4 So when it was transmitted to Port Erie  
5 Plastics, it was a complete inventory of the cars that  
6 were on the private siding as well as those that were  
7 on the storage track.

8 Q How did you know what information was --  
9 was it the constructive placement notice that told you  
10 what was available on the CSX storage track?

11 A That -- that notice gave me the car number.

12 I also received by fax from the shipper a  
13 bill of lading, the railroad bill of lading, with the  
14 car number and the product codes on it, so that when  
15 that car arrived, I would have both documents and I  
16 would know what product it was.

17 Q And it was a constructive placement notice  
18 that told you that the car had arrived?

19 A Yes.

20 Q When you receive the constructive placement  
21 notice, say, on a -- strike that.

22 This railcar inventory was prepared and  
23 sent to Port Erie every Friday; is that correct?

24 A That's correct, before noon every Friday.

25 Q So if a constructive placement notice had

1 A That's correct.  
 2 Q And did that also apply with Plastek, those  
 3 notes at the bottom, bring another car in?  
 4 A Yes.  
 5 Q And with regard to this, who had the most  
 6 volume running in and out of Mount Fort Terminal,  
 7 Plastek or Port Erie?  
 8 A From memory, it would be difficult.  
 9 I would -- to tell you -- to answer that, I  
 10 would say that Plastek had more cars at Mount Fort  
 11 than Port Erie did.  
 12 Q That's all I want.  
 13 And, of course, Plastek was really the  
 14 parent company or the common ownership company for  
 15 Presque Isle Trucking; correct?  
 16 A Correct.  
 17 Q Why was Presque Isle Trucking established?  
 18 A As a common carrier, we -- to provide resin  
 19 service, and as time went along, we would service  
 20 Plastek customers to give them some reliability of  
 21 service.  
 22 Q Now, did you do anything other than bulk  
 23 trucking?  
 24 A Oh, yes.  
 25 Q What other kind of trucking did you do?

1 Port Erie prior to this particular movement at least  
 2 once.  
 3 Q With bulk rail?  
 4 A Yes, uh-huh.  
 5 Q Now, you said you were familiar with  
 6 Nexpak.  
 7 What made you familiar with Nexpak? Why  
 8 would they be calling you?  
 9 You said on certain occasions they would  
 10 call you.  
 11 What did they inquire of you?  
 12 A Again, during the period of time that -- in  
 13 question here, I had no conversation with Nexpak.  
 14 It was only after -- the initial company,  
 15 Nexpak, in this period of time in question here, went  
 16 bankrupt.  
 17 And after that, the controls on releasing  
 18 the resin became much more stringent, as I understand  
 19 it, because I'm getting all of -- this information was  
 20 second hand, it was passed onto me from Port Erie,  
 21 the -- at that point, I know that the credit issues  
 22 became tighter, and the releases of the cars -- we got  
 23 more people involved in the process.  
 24 Q Now, you said that BP would send you bills  
 25 of lading --

1 A Well, as a common carrier, we are licensed  
 2 to handle general commodities.  
 3 Q Did you also ship for Plastek its final  
 4 product in boxed trucks?  
 5 A Yes, we did.  
 6 Q And why would a company want to own a  
 7 common carrier associated with its business?  
 8 A Perhaps you might ask Mr. Prischak that  
 9 question.  
 10 Q Do you understand that there's a tax  
 11 benefit for that?  
 12 A I wasn't involved with that.  
 13 Q And you were hired after it was  
 14 established?  
 15 A I was hired when it was established.  
 16 Q And that was what year?  
 17 A 1991.  
 18 Q And when did you start doing anything for  
 19 Port Erie?  
 20 A Oh, it was many years after that.  
 21 Q So did you haul resin for anyone other than  
 22 Plastek before the Port Erie association?  
 23 A I don't remember.  
 24 Q Do you recall off the cuff?  
 25 A We had had -- we had done business with

1 A That's right.  
 2 Q -- when a railcar would be dropped into the  
 3 Mount Fort Terminal by CSX?  
 4 A No. When it was shipped.  
 5 Q So you got a notice of shipment.  
 6 Did you forward the notice of shipment to  
 7 Port Erie?  
 8 A No.  
 9 Q Did you forward any of these constructive  
 10 placement notices to Port Erie?  
 11 This particular document (indicating), did  
 12 you fax this over?  
 13 A Did I? No.  
 14 Q So you did send them, you said, a car  
 15 inventory, but you don't have any car inventories that  
 16 are relevant to the time in question?  
 17 A No.  
 18 Q That was only after.  
 19 So you don't have any ones to show us what  
 20 exactly you disclosed to Port Erie as far as a railcar  
 21 inventory and what notice you gave them as far as  
 22 constructive placements or anything else; correct?  
 23 A Right.  
 24 Q And when you got the -- did you get a bill  
 25 of lading as the notice of shipping?



1 instructions that you were receiving -- your drivers  
2 were receiving from Port Erie?

3 A That's correct

4 Q During the time period where Presque Isle  
5 had a business relationship with Port Erie, did you

6 have occasion to have any communications with an  
7 entity known as Nexpak?

8 A Not during this time frame.

9 Q How about any time frame?

10 A Later, yes Not a lot, a couple of times.

11 After -- I can't -- I don't know what dates  
12 they were, and not very much.

13 Every once in a while, we'd get a phone  
14 call about something, and as time went on and this  
15 movement started to go away, we would get a phone call  
16 occasionally to divert a car that was up here, but  
17 other than that, very seldom.

18 Q Do you recall conversations concerning the  
19 diversion of a car during the 2002-2003 time period?

20 A No.

21 The move was in full swing here at that  
22 point, and there was -- we never diverted anything at  
23 that point.

24 Q During the relevant time point -- by that,  
25 I mean the 2002-2003 time period -- did you have

1 and so it was not my job to carry it much further than  
2 that.

3 Q Were you attempting to give him advice?

4 A We -- it wasn't my job. They weren't  
5 paying me to give them advice.

6 I mean, we discussed the issue of having  
7 all those cars on hand, and made attempts to find some  
8 other areas to get them to put those cars, to get them  
9 off of demurrage.

10 We made one -- he and I did make one joint  
11 meeting with the people from the East Erie Commercial  
12 Railroad in an attempt to -- which is at the GE  
13 facility here -- in order to see if there was a way  
14 that we could -- we -- he could rent the space there  
15 as compared to having a storage track.

16 MR. HOWARD: That's all I have.

17 EXAMINATION

18 BY MR. PARKS:

19 Q Mr. Bartosik, as you know --

20 A Before we start, could I find out who else  
21 is here?

22 MR. PARKS: Sure.

23 MR. WITKOWSKI: Jim Witkowski.

24 THE WITNESS: I didn't recognize you.

25 MR. WITKOWSKI: I know.

1 occasion to have any communications with the  
2 shippers?

3 And by "shipper," I mean BP Amoco.

4 A No.

5 Q Did you ever discuss the accrual of  
6 demurrage charges with anyone at Port Erie Plastics?

7 A Yes.

8 Q And with whom did you discuss that?

9 A Jim Witkowski.

10 Q And do you recall when the first time was  
11 that you might have had that conversation?

12 A No.

13 It was so long ago, and it was telephone,  
14 you know. We talked about it a number of times. I  
15 mean, it was casual conversation, such as -- you know,  
16 as to the number of cars that were here, and the fact  
17 that they were accruing demurrage. That was kind of  
18 it.

19 They weren't my cars, so it wasn't an issue  
20 that I had to spend a lot of time on.

21 Q Was the conversation of the type where you  
22 were providing information to Mr. Witkowski?

23 A Not -- not really

24 I mean, he had the inventory and he knew  
25 how many cars were here, and the issues that were --

1 MR. JOHNSON: John Johnson.

2 THE WITNESS: John, nice to meet you.

3 And you are?

4 MR. STROUPE: Scott Stroupe.

5 MR. PARKS: He's an associate.

6 BY MR. PARKS:

7 Q Mr. Bartosik, as you're now aware, my name  
8 is Rich Parks. I am representing Port Erie Plastics  
9 in this.

10 I have some questions about your testimony.

11 First of all, if I'm correct, with regard

12 to your conversation on Deposition Exhibit No. 2,  
13 which is this particular document that I'm showing you  
14 (indicating), that is irrelevant to Port Erie  
15 Plastics; correct?

16 Didn't you say that the testimony was,  
17 these are Plastek cars?

18 A One form was used for all the cars.

19 Q So you didn't distinguish a Port Erie,  
20 Plastek car. It was a car, you needed it out of one  
21 of these facilities, and you would list them, and you  
22 would tell -- ship that over to CSX and down to  
23 Pittsburgh and say, "Get it out of here," and  
24 sometimes you said you might put a note on here to  
25 move another car in; correct?